

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ALTON CRAIN,

Plaintiff,

y.

**CITY OF SELMA, THOMAS DALY,
JAMES PARMA, KENNETH ROBERTS,
JOHNNY CASIAS, KEVIN HADAS,
PHILLIP SWINNEY, HARRY GREENE,
KENNETH HARRIS, LARRY VERNER,
ROBERT KLAENER, MARC SCHNALL,
and CHARLES FRIGERIO,**

Defendants.

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SA-16-CA-408-XR (HJB)

## ORDER

The matters before the Court are (1) Plaintiff’s Motion for Appointment of Counsel (Docket Entry 2), and Motion for Spoliation “Death Penalty” Sanction (Docket Entry 4). Pretrial matters have been referred to the undersigned for consideration, pursuant to 28 U.S.C. § 636(b). (Docket Entry 5.)

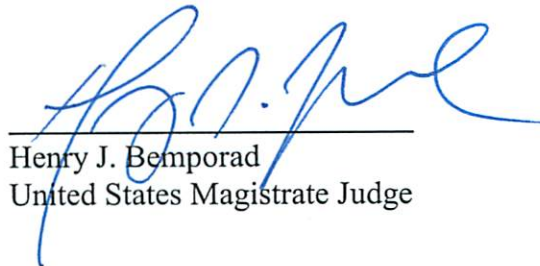
In a civil case, counsel may be assigned by the Court only in “exceptional circumstances.” *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). In this case, it does not appear that summonses have been served on all the Defendants; no Defendant has filed an answer, though one Defendant has moved to dismiss the complaint against him for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (See Docket Entry 6.) It does not appear that any discovery has yet been exchanged. Given the early stage of proceedings in this case, the Court cannot find that exceptional circumstances exist to justify the assignment of counsel. Accordingly the Motion for Appointment of Counsel (Docket Entry 2) is **DENIED WITHOUT PREJUDICE** to reconsideration at a later

date.

It is not clear what Plaintiff seeks by his Motion for Spoliation “Death Penalty” Sanction. (Docket Entry 4.) Although the title of the motion mentions “spoliation,” the motion contains neither a request that Defendants preserve any evidence, nor any claim that evidence has not been preserved. Instead, Plaintiff apparently seeks a continuance, either of any pretrial conference or hearing, or the trial of the case. (*Id.* at 1.) Since no date has been set for any hearing or trial in the case, the Motion is **DENIED AS MOOT**.

It is so **ORDERED**.

**SIGNED** on May 27, 2016.



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Henry J. Bemporad  
United States Magistrate Judge